UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

DEC 14 2010

Honorable Tim Johnson
Member, United States Senate
Sioux Falls Office
PO Box 1424
Sioux Falls, South Dakota 57101

Dear Senator Johnson:

This is in follow-up to our April 22, 2010, response (copy enclosed) to your January 29, 2010, letter addressed to the Office of Legislative and Congressional Affairs, concerning issues raised by your constituent (b)(6) (Student) under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g; 34 CFR Part 99. The Student stated that she has been improperly denied access to some of her education records at the University of South Dakota (University), and she asked for your assistance in correcting this situation.

Specifically, the Student stated that, when she reviewed her education records at the University in May 2008, she was not given access to two or three documents "regarding the unprofessional behavior [of the Student] submitted by several classmates and placed in [the Student's] file." Your January 2010 letter to this Office asked that we inform you of any options available to permit the Student to inspect and review those two or three documents at issue.

As we stated in our April 22 letter, we first needed to determine that the two or three documents in question were currently being maintained by the University. Kathleen Wolan of my staff conducted a series of telephone discussions on this matter with Ms. Jennifer Jobst, registrar of the University, and acting for the University in this matter. Ms. Jobst consulted with Ms. Joan Larson, associate dean of the University, and Dr. Brian Kaatz, dean of the health services division of the University. Through a series of telephone discussions, we have determined that the requested education records no longer exist at the University. It appears that those records were destroyed by the University at some time in 2008, although a specific destruction date is not available.

FERPA does not require a university to create or maintain education records, or to re-create lost or destroyed education records. Additionally, FERPA would not require a university to honor a student's request that education records not be destroyed. However, a university may not destroy education records if there is an outstanding request to inspect and review the records. FERPA does not otherwise address the destruction of education records by a university.

Due to the passage of time, we are unable to conclude whether the documents in question were maintained by the University when the Student requested access. Nonetheless, if the documents were maintained, it seems that the University may have originally misidentified the requested records as not being education records of the Student. As such, the University may have destroyed them before providing the Student an opportunity to inspect and review the records in accordance with FERPA. Due to this situation, this Office has provided the University with technical assistance regarding FERPA in order that it properly understands and complies with the requirements of FERPA.

As we stated in our previous letter, we are unable to assist the Student further in this matter since the requested education records are not currently maintained by the University. I regret the extended time period that has been required to resolve this matter, but trust that this is responsive to your inquiry. If you or the Student have any questions regarding this matter, you may contact this Office directly. The name, address, and telephone number are as follows:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-8520
Telephone: (202) 260-3887

Sincerely,

(b)(6)

Ellen Campbell
Acting Director
Family Policy Compliance Office

Enclosure